



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

GERSH & TATIANA ZAVODNIK)

Complainants,)

v.)

MARION COUNTY SUPERIOR)
COURT 13)

Respondent.)

17-FC-133

ADVISORY OPINION

July 20, 2017

This advisory opinion is in response to the formal complaint alleging the Marion County Superior Civil Court 13 (“Court”) violated the Access to Public Records Act (“APRA”). Ind. Code §§ 5-14-3-1–10. The Court has responded via Richard McDermott, Assistant Corporation Counsel for the City of Indianapolis. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 13, 2017.

BACKGROUND

In their formal Complaint, the Complainants allege the Marion County Superior Civil Court 13 has failed to acknowledge a public records request within seven (7) days.

The Complainants faxed a records request to the Court on or about May 25, 2017. The Complainants filed a formal Complaint with my Office on June 13, 2017, alleging a violation of APRA by the Court for failing to respond to their records request. My office notified the Court of the Complaint on June 16, 2017. We received the response of the Court on June 30, 2017. In the response, the Court provides that the fax was never received, and that the Court could not provide a response to a request that was never received.



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The Court also provides in the response that they have no records responsive to the Complainants' requests, and that the Complainants' records requests should be more appropriately sent to the Marion County Clerk, as the Clerk is the "official keeper of Court records."

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Marion County Superior Court 13 is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Accordingly, any person has the right to inspect and copy the Court's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

If the Court did not receive the records request sent by the Complainants, then the Court could not be expected to respond to the request. Under the APRA, an agency is only required to respond to requests that the agency receives. Had the Court received the request, the Court would have been required to send a response acknowledging the Complainant's request within seven (7) days of receiving the request. *See* Indiana Code section 5-14-3-9(c). Furthermore, I agree with the Respondent that the Complainant should send requests for court documents to the Clerk of the county in which the court is located. However, persons who send requests to an agency that does not maintain the requested records are still entitled to a response informing the requestor as such.

The Complainants submitted to my Office a copy of the fax coversheet that includes a certificate of service which states that the faxed documents would also be mailed through the U.S. Postal Service. However, the Complainants did not include proof of delivery and did not otherwise mention mailing copies of the requests, so I am unable to address this matter in my opinion.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Marion County Superior Court 13 has not violated the Access to Public Records Act.



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Luke H. Britt

A handwritten signature in black ink, appearing to read "L. H. Britt".

Public Access Counselor

Cc: Richard McDermott, Assistant Corporation Counsel